IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

Bail Appl..No. 4313 of 2007()

CRIME NO.321/07 OF KANNUR TOWN POLICE STATION

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PETITIONERS/ACCUSED

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1. M.P.RAFEEQUE, S/O.MOIDU, AGED 31 YEARS, SANA, VETTILAPPALLY, THANA P.O., KANNUR.

2. SAHEER, S/O.MUSTAFA, AGED 23 YEARS, AAFA, K.T.VAYAL, KANNUR.

3. T.RASHEED, S/O.SUBAIR, AGED 23 YEARS, JAMEELAS, ANDATHODE, THAYYIL P.O., KANNUR.

4. M.SIYAD, S/O.SIDHIQUE, AGED 26 YEARS, ZUBAIDAS, VETTILAPPALLY, THANA.P.O., KANNUR.

BY ADV. SRI.P.K.RAVISANKAR

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 16/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NO. 4313 OF 2007

Dated this the 16th day of July, 2007

ORDER

Application for anticipatory bail. Petitioners are accused 1 to 4. They face allegations in a crime registered, inter alia, under Sec.308 read with Sec.34 of the IPC. The crux of the allegations is that on account of prior animosity, the accused persons, in furtherance of their common intention, attacked the de facto complainant with a `nanjeck' and caused serious injuries to him. The alleged incident took place on 29/7/07 at 7 p.m. All the petitioners are named in the F.I.R. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The de facto complainant is politically influential. That is why the

allegation under Sec.308 of the IPC has been raised against the petitioners without any justification. The transparent intention is to ensure that the petitioners are left in custody without bail for as long a period as possible. In these circumstances, it is prayed that directions under Sec.438 of the Cr.P.C. may be issued.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the allegations are serious. The nature of the weapon as also the nature of the injuries have been brought to my notice. It is submitted that the inclusion of the allegation under Sec.308 of the IPC is perfectly justified in the facts and circumstances of this case. It is not necessary at all to invoke the extraordinary equitable discretion under Sec.438 of the Cr.P.C. This petition may, in these circumstances, be dismissed, prays the learned Public Prosecutor.

4. I find merit in the opposition by the learned Public Prosecutor. I do not find any circumstances that would justify this Court invoking the extraordinary equitable discretion under Sec.438 of the Cr.P.C. This, I am satisfied, is an eminently fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then

seek regular bail in the ordinary course.

5. This petition is, in these circumstances, dismissed; but with the observation that if the petitioners surrender before the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge